



September 28, 2001

Mr. Forrest K. Phifer
Attorney at Law
P.O. Box 829
Rusk, Texas 75785

OR2001-4361

Dear Mr. Phifer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152535.

The Honorable James Long, Municipal Judge of the City of Rusk (the "judge"), which you represent, received a request for copies of various information pertaining to alleged offenses of Texas Transportation Code §§ 683.071-.073 and a specified property. You state that you maintain no information that is responsive to request items 5 through 7.¹ You also state that you have provided the requestor with some responsive information, including certain "basic information." You claim, however, that the submitted information constitutes records of the judiciary and are not subject to the Act. In the alternative, you argue that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). It does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act. Gov't Code § 552.0035(a); *see*

¹ It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). In addition, the Act does not require a governmental body to prepare answers to questions or to undertake legal research. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

also Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. See Attorney General Opinion DM-166 (1992). But see *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 ("function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act."). You state that the submitted information, which is responsive to request items 1 through 4, has been filed with and is maintained by the City of Rusk's ("city") municipal court as adjudicative records. You also state that the submitted information is not in the custody or care of the city or the city police department, but is maintained solely by the city's municipal court. Based on your representations and our review of the submitted information, we agree that the submitted records are records of the judiciary and are, thus, not subject to the Act. See Attorney General Opinion DM-166 (1992). We note, however, that as records of the judiciary, the submitted information may be made public by other sources of law. See Attorney General Opinions DM-166 at 2-3 (1992) (public has general right to inspect and copy judicial records), H-826 (1976); see also Open Records Decision No. 25 (1974); *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released). Additionally, the submitted information may be subject to disclosure under statutory law that governs municipal courts. See Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); see also *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); Tex. Sup. Ct. R. 12. Because the submitted information is not subject to the Act, we need not address the applicability of your claimed exceptions to disclosure to the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

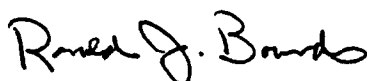
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 152535

Enc. Submitted documents

cc: Mr. Steven R. Guy
108 East 5th Street
Rusk, Texas 75785
(w/o enclosures)